

Clerk's stamp:



COURT FILE NUMBER

1901-04554

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

JEFF CALLAWAY, NICOLE CALLAWAY,
JENNIFER THOMPSON, DARREN
THOMPSON, BONNIE THOMPSON and
ROBYN LORE

JSC
April 1/19
J. Kirker

RESPONDENT

OFFICE OF THE ELECTION
COMMISSIONER OF ALBERTA

DOCUMENT

ORIGINATING APPLICATION

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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File No.: 240058.0001

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date	<u>April 1, 2019</u>
Time	<u>2:00pm</u>
Where	<u>Calgary Court Centre</u>
Before Whom	<u>Justice A. Kirker</u>

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Basis for this claim:

1. The Applicants have been contacted by the Alberta Election Commissioner (the "**Commissioner**") with respect to an investigation (the "**Investigation**") being conducted by the Office of the Election Commissioner (the "**OEC**") into the United Conservative Party Leadership Campaign of Jeff Callaway.
2. The following individuals have received a "Summons" from the Commissioner, Mr. Lorne Gibson, requiring their attendance at an interview with the OEC as follows:
 - (a) Jennifer Thompson: 9:00am on March 26, 2019;
 - (b) Darren Thompson: 1:00pm on March 26, 2019;
 - (c) Robyn Lore: 9:30am on April 2, 2019; and
 - (d) Nicole Callaway: 1:00pm on April 2, 2019,(collectively, the "**Interviews**").
3. On March 19, 2019, counsel for the Applicants requested an adjournment of the Interviews (the "**Adjournment Request**").
4. On March 20, 2019, counsel for the Applicants received a reply from the OEC denying the Adjournment Request and indicating that the enforcement activities and responsibilities of the OEC must escalate during an election period.
5. On March 20, 2019, counsel for the Applicants requested an explanation for the urgency of the Interviews.
6. On March 21, 2019, counsel for the Applicants received a letter from the OEC confirming the dates and times of the Interviews, but providing no explanation for the urgency of the Interviews.
7. On March 21, 2019, the Commissioner communicated with Lenore Eaton and stated conclusions and set forth findings with respect to the Jeff Callaway United Conservative Party leadership campaign without hearing from both sides of the matter.
8. On March 22, 2019, counsel for the Applicants sent a letter to the OEC (the "**March 22, 2019 Letter**") again requesting an explanation for the urgency of the Interviews, and raising the following two additional concerns:
 - (a) that counsel for the Applicant had learned that the OEC was referring findings from investigations to the Royal Canadian Mounted Police (the "**RCMP**"), that counsel for the Applicant was concerned that the Interviews may not constitute a "proceeding" within the meaning of Section 13 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the "**Charter**"), and that counsel for the Applicant was concerned that the Applicant's Charter rights against self-incrimination were therefore not adequately protected; and

- (b) that the existence or contents of the Interviews could become public during the Election Period (defined herein as the period between March 21, 2019 and April 16, 2019, inclusive), thereby violating the *Election Communication Policy* published by the Government of Alberta and the unwritten convention that government activity be limited during an election period so as not to interfere with the election.
9. In the March 22, 2019 Letter, counsel for the Applicants requested that the Interviews be postponed until after the Election Period, given the concern in Paragraph 7(b) above, and, in light of the concern in Paragraph 7(a) above, that prior to proceeding with the Interviews, the Commissioner provide a letter guaranteeing that the Investigation would only be dealt with internally by the OEC and that any findings from the Investigation would not be referred to the RCMP.
10. On March 25, 2019, the OEC responded to the March 22, 2019 Letter, stating that:
- (a) pursuant to Section 5.2(2)(j) of the *Election Finances and Contributions Disclosure Act*, RSA 2000, c E-2 (the "EFCDA"), the Commissioner may disclose information to a law enforcement agency in certain situations, and, as such, it is not possible to provide a letter of the type requested in the March 22, 2019 Letter; and
- (b) that the *Election Communication Policy* and the unwritten convention on which it is based is unreasonable because it would frustrate the purpose of the EFCDA.
11. Counsel for the Applicants responded on March 25, 2019 again requesting:
- (a) an explanation for the urgency of the Interviews; and
- (b) a substantive response to the query outlined in the March 22, 2019 Letter regarding whether or not investigations by the OEC would qualify as a "proceeding" pursuant to section 13 of the Charter.
12. The OEC has breached section 5.2(1) of the EFCDA in the course of the Investigation and during other investigations in a number of ways, including:
- (a) indicating in communications to potential witnesses the names of others that are being investigated;
- (b) misdirecting communication intended for one person, complete with specific details of the investigation; and
- (c) tweeting on March 6, 2019 that the OEC was investigating a complaint into a matter and then, nine days later, advising that in fact there was no such complaint.
13. On March 26, 2019 and March 27, 2019 Counsel for the Applicants raised issues of bias and pre-determined conclusions of the Commissioner; no reply from the Commissioner was received.
14. The OEC has breached section 3 of the Charter in the course of the Investigation by requiring the aforementioned individuals to attend interviews with the Commissioner during the Election Period. Requiring Albertans to attend such interviews during the Election Period interferes with their Charter right to participate in the electoral process,

despite that the activity being investigated occurred prior to the Election Period and there is no urgency to the Investigation.

15. The aforementioned breach of section 3 of the Charter cannot be justified under section 1 of the Charter. The interviews serve no legitimate governmental purpose, and are not rationally connected to the goal of preserving the integrity of the election process. The interviews do not minimally impair the rights set out in section 3 of the Charter.
16. Even if the interviews are rationally connected to the Legislature's goal and are minimally impairing, which is not admitted but denied, the deleterious impact upon Charter rights is disproportionate to any public benefit.
17. Given the above, and in particular the statement by the OEC that the enforcement activities and responsibilities of the OEC must escalate during an Election Period, there is a reasonable apprehension of bias on the part of the Commissioner with respect to the Investigation.
18. Given the above and in particular the "findings" of the Commissioner while the investigation is still proceeding and that key witnesses have not yet been interviewed, there is at least a reasonable apprehension of bias and that the Commissioner has already reached a concluded view and he is not able to bring an unbiased mind to the determination of the issues before him.

Remedy sought:

19. An Order abridging the time for service of this Originating Application;
20. An Order declaring that sections of the EFCDA and sections of the *Election Act*, RSA 2000, c E-1 (the "**EA**"), including sections 1(1)(c) and 57 of the EA and sections 9.1, 9.2, 9.3, 44.2, 43.01, 43.02, 44.11, 44.7, 44.8, 44.81, 44.82, 44.96, and 44.97 of the EFCDA, are inconsistent with the Charter and therefore of no force or effect;
21. A declaration with respect to whether or not interviews conducted by the OEC constitute a "proceeding" within the meaning of section 13 of the Charter;
22. A declaration with respect to whether or not there is actual bias or a reasonable apprehension of bias on the part of the Election Commissioner with respect to the Investigation;
23. A declaration that the Applicants' rights to due process and fundamental justice under section 1 of the *Alberta Bill of Rights* and section 7 of the *Canadian Charter of Rights and Freedoms* have been violated.
24. An Interim Order enjoining the Commissioner and any of his agents or employees from taking any further steps with respect to the Investigation, other than to accept complaints and information voluntarily delivered to the Commissioner, until such time as the all of the above are determined.

Affidavit or other evidence to be used in support of this application:

25. Affidavit of Bonnie Thompson, filed herewith;
26. Affidavit of Angie Champoux, filed herewith;

- 27. Affidavit of Paula McNulty, filed herewith; and
- 28. Affidavit of Wendy Adam, filed herewith.

Applicable Acts and regulations:

- 29. *Judicature Act*, RSA 2000, c J-2.
- 30. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.
- 31. *Election Finances and Contributions Disclosure Act*, RSA 2000, c E-2.
- 32. *Election Act*, RSA 2000, c E-1.
- 33. *Alberta Bill of Rights*, RSA 2000, c A-14.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.